

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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JAN 25 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0294-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
STEPHEN J. TUCCI,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20070708

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

Patrick C. Coppen

Tucson
Attorney for Petitioner

ESPINOSA, Judge.

¶1 Stephen Tucci petitions this court for review of the trial court’s June 2010 denial of his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb this ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Tucci was convicted after a jury trial of theft of a means of transportation, third-degree burglary, and possession of burglary tools and was sentenced to concurrent, substantially mitigated prison terms, the longest of which was 7.5 years. We affirmed his convictions and sentences on appeal. *State v. Tucci*, No. 2 CA-CR 2008-0040 (memorandum decision filed Apr. 2, 2009). Tucci then filed a notice of and petition for post-conviction relief, asserting his trial counsel had been ineffective in failing “to properly investigate and/or present a full defense” despite attempts by family members to provide potentially exculpatory information and in failing to “alert the trial [c]ourt” to mental health issues Tucci had experienced during trial that prevented him from testifying. He also argued he was incompetent at the time of trial and that his right to testify in his own defense had been violated because his mental health issues prevented him from testifying.

¶3 The trial court summarily denied relief, concluding Tucci had demonstrated neither that his trial counsel’s representation had been ineffective nor that he had been prejudiced. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (colorable claim of ineffective assistance requires showing counsel’s performance was substandard and prejudiced defense). The court also determined Tucci had not shown that his counsel or

the trial court should have been aware of any purported mental health issues that prevented Tucci from testifying or rendered him incompetent and that Tucci had not demonstrated he was incompetent during trial.

¶4 On review, Tucci asserts he presented colorable claims of post-conviction relief and that we therefore should order the trial court to conduct an evidentiary hearing on his claims. A colorable claim is “one that, if the allegations are true, might have changed the outcome.” *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993). But Tucci merely summarizes the arguments he made below without elaboration, citation to relevant authority, or any explanation how the court erred in summarily rejecting his claims. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review shall contain “the reasons why the petition should be granted”); *cf.* *State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) (“[m]erely mentioning an argument is not enough”; failure to argue claim constitutes abandonment on appeal). For example, he does not address the court’s conclusion that his trial counsel investigated the case adequately, or its determination that none of the information his counsel should have discovered and presented at trial might have changed the verdicts. Nor does he address the court’s finding that “nothing in the record indicates that either the Court or [Tucci]’s trial counsel observed any behavior that would lead them to question [his] competency.” Moreover, he does not explain why his mental-health claims, to the extent they are not based on ineffective assistance of counsel, were not raisable on appeal and therefore not

precluded under Rule 32.2(a)(1). For these reasons, Tucci has failed to sustain his burden of demonstrating the trial court erred by summarily rejecting his claims.

¶5 We grant review of Tucci's petition but deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge